

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



THE ST. PAUL COMPANIES
May 25, 2004

Office of Monitoring, Audit & Enforcement

Paul Dionne
Executive Director

Steven P. Minkowsky
Deputy Director of Benefits Administration

CONTENTS

SUMMARY	3
PENALTIES	6
♦ Section 205(3), M.R.S.A. Penalties (payable to injured employees)	6
♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board)	7
39-A M.R.S.A. Sec. 359(2).....	7
39-A M.R.S.A. Sec. 360(1)(A)	7
39-A M.R.S.A. Sec. 360(1)(B)	8
39-A M.R.S.A. Sec. 360(2).....	8
INDEMNITY BENEFITS	9
A. Prompt Initial Payment of Benefits.....	9
B. Prompt Subsequent Payment of Benefits	9
C. Accuracy of Average Weekly Wage.....	9
D. Accuracy of Weekly Benefit Rate	9
FORM FILING.....	10
A. First Report (WCB-1)	10
B. Wage Statement (WCB-2).....	10
C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A).....	10
D. Memorandum of Payment (WCB-3).....	10
E. Discontinuance or Modification (WCB-4).....	11
F. Notice of Controversy (WCB-9).....	11
G. Statement of Compensation Paid (WCB-11)	11

SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined 39 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the claims files audited, there were 16 “lost time” claims, 19 “medical only” claims, 1 that was not a Maine jurisdiction claim, and 3 “incident only”¹ claims.

The following companies were examined as a result of this review. The St. Paul Companies were:

- ✓ St. Paul Fire and Marine
- ✓ St. Paul Guardian
- ✓ Fidelity and Guaranty Insurance Company
- ✓ United States Fidelity and Guaranty Company

Form Filing

Form filing compliance ranged from 0.0 percent to 100.0 percent.

- ◆ The highest percent of compliance (100 percent) was found in both the filing of the WCB-9, Notice of Controversy (NOC) and the WCB-4, Discontinuance or Modification of Compensation forms.
 - Both WCB-9 forms were filed within the WCB filing timelines. Of the two (2); one (1) was filed as a medical only NOC and one was filed as a lost time NOC.
 - All eight (8) WCB-4 forms were filed at the time of the on site examination. However one (1) was not required to be filed.
- ◆ The second highest percent of compliance (62.50 percent) was found in the filing of WCB-3, Memorandum of Payment forms.
 - Of the 8 forms filed timely, two (2) were not required to be filed with the WCB as the claims never became compensable.

¹ “Incident only” Claims incur no medical expenses and less than a day of lost time.

SUMMARY (continued)

- ◆ Approximately fifty-three (53.33) percent compliance was found in the filing of WCB-1, Employer's First Report of Occupational Injury or Disease forms. Of the fifteen (15) forms required to be filed:
 - Eight (8) were filed timely.
 - Seven (7) were filed late with filing dates far exceeding the forms timeline in accordance with Title 39-A and the WCB Rules and Regulations.
- ◆ One of most significant form filing compliance problems appears to be in the filings of the Wage Statement (WCB-2) and Schedule of Dependents (WCB-2A). Compliance is at thirty-seven and a half (37.50) and twenty-five (25.00) percent respectively.
 - The five (5) WCB-2 forms shown as "Filed Late", were all filed after their due dates, two (2) were filed as a result of a request made by this division and three (3) had been filed at the time of our on site.
 - Of the two (2) WCB-2A forms shown as "Not Filed", one (1) was requested on August 26, 2003 with an imposed response deadline of September 19, 2003. This form was not filed with the WCB until after the deadline.
 - Of the four (4) WCB-2A forms shown as "Filed Late", two (2) were requested by this division and submitted prior to the imposed deadline and two (2) were filed at the time of our on site visit. However all of which were filed after their WCB approved deadlines.
- ◆ The most significant form filing compliance problem appears to be in the filing of the Statement of Compensation Paid (WCB-11). Compliance was at 0%. It appears that the St. Paul Companies do not have an effective system for generating these forms in a timely manner. This division would recommend that they confront and eradicate this issue in the future.

Timeliness and Accuracy of Indemnity Payments

- ◆ Of the sixteen (16) lost time claims identified;
 - Five (5) were found to be compensable,
 - ✓ two (2) were calculated and paid correctly (minor rounding errors noted)
 - ✓ three (3) were overpaid
 - One (1) was paid 21 days past the EE's return to work for the same employer
 - One (1) was an error in the calculation of the benefit rate due
 - One (1) was an error in calculating partial benefits due

SUMMARY (continued)

- The remaining eleven (11) break down as follows:
 - ✓ one (1) claim was controverted timely
 - ✓ seven (7) were non-compensatory lost time claims.
 - ✓ two (2) claims were reported and paid even though they never became compensable claims.
 - ✓ One (1) was undeterminable as a result of the examination of such file was not completed due to incorrect information submitted to the Audit Division

The net over/under for all payments was \$564.93.

- ◆ No general problems were identified in the methods used to determine average weekly wages. St. Paul's overall compliance for average weekly wage calculations was at 100%.
- ◆ Weekly benefits rates were calculated correctly in approximately seventy one percent (71.42) of the compensated claims audited.
 - Of the two (2) claims noted as "Incorrect", one (1) was paid provisionally at a wrong rate, but was subsequently modified to the correct rate. This action left the claimant being owed additional indemnity.
 - The second claim noted as "Incorrect", was as a result of the wrong rate being used and is also being shown as "Unknown" in the categories of subsequent payments because the Audit Division was supplied with the wrong information in regards to this claim.

It would appear to this division that the St. Paul Companies have a clear understanding of the calculation and application of the weekly benefit rates.

The St. Paul Companies had one (1) "Complaint for Audit" filed with the MWCB.

- This Complaint was in regards to a WCB-11, Statement of Compensation Paid, apparently not having been filed timely by St. Paul Guardian Insurance Company. The complaint was investigated and resolved prior to the start of this examination. No further action was deemed necessary.

PENALTIES

♦ **Section 205(3), M.R.S.A. Penalties (payable to injured employees)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Kevin Kelley vs. Family Tree Landscaping Date of Injury: 4/26/01 Insurer File Number: 7701W12587 WCBN Number: 01-00-52-89 Employer notice of Incapacity: 4/27/01	Initial payment was 78 days late and subsequent payment was 99 days late.	\$1,500.00
Truc Ha vs. MBNA Corporation Date of Injury: 7/30/01 Insurer File Number: WC390190402 WCBN Number: 01-01-86-37 Employer notice of Incapacity: 8/21/01	Subsequent payment made on 12/6/01 was 51 days late	\$1,050.00
Matt Lavellee vs. MBNA Corporation Date of Injury: 8/3/01 Insurer File Number: WC390192084 WCBN Number: 01-01-09-41 Employer notice of Incapacity: 8/3/01	Subsequent payment made on 10/23/01 was 67 days late	\$1,500.00
<hr/> Total Penalties to Injured Employees		\$4,050.00

PENALTIES (Continued)

♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

➤ The Deputy Director of Benefits Administration has the authority to and may refer St. Paul Insurance to the Abuse Investigation Unit to pursue penalties under §359(2) for the following reasons, (including, but not limited to):

- Required forms not being filed with the MWCB
- Claim files not complete or unavailable upon on site examination necessitating auditor to visit TPA, highly irregular
- Miscoding of penalties
- Unreported lost time claims
- Over reporting of non-compensable lost time claims

Possible penalty exposure: \$10,000.00

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

PENALTIES (Continued)

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Twenty-six (26) forms were filed late (\$2,600.00).

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

INDEMNITY BENEFITS

A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	4	50.0%
15 +			4	50.0%
Total Due			8	100.0%

Two (2) initial payments were not required to be reported to the WCB as the claims never became compensable.

B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	Compliant	25	61.00%
8-14			5	12.19%
15 +			10	24.40%
Unknown			1	2.41%
Total Due			41	100.0%

C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	7	100.00%
Incorrect			0	0.00%
Total			7	100.0%

D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	5	71.42%
Incorrect			2	28.58%
Total			7	100.0%

FORM FILING

A. First Report (WCB-1)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	8	53.33%
Filed Late			7	46.67%
Total			15	100.00%

B. Wage Statement (WCB-2)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	3	37.50%
Filed Late			5	62.50%
Total			8	100.00%

C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	2	25.00%
Filed Late			6	75.00%
Total			8	100.00%

D. Memorandum of Payment (WCB-3)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	5	62.50%
Filed Late			3	37.50%
Total			8	100.00%

FORM FILING (Continued)

E. Discontinuance or Modification (WCB-4)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	8	100.00%
Filed Late			0	0.00%
Total			8	100.00%

F. Notice of Controversy (WCB-9)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	2	100.00%
Filed Late			0	0.00%
Total			2	100.0%

G. Statement of Compensation Paid (WCB-11)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	0	00.00%
Filed Late			6	100.00%
Total			6	100.00%